(1)S.B.CIVIL WRIT PETITION NO.2541/1995
Roshan Lal v. Manager, Raj.Cooperative Dairy Federation Ltd., Hanumangarh & Anr.

(2)S.B.CIVIL WRIT PETITION NO.1957/1995
M/s Raj.Cooperative Dairy Federation Ltd., Hanumangarh & Anr. v. The Judge Labour Court, Bikaner & Anr.

DATE OF ORDER :: 4th April, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. D.K.Parihar, for the petitioner-workman.
Mr. B.C.Mehta, for the respondent-employer.
(In SBCWP No.2541/95)

Mr. B.C.Mehta, for the petitioners-employer
Mr. D.K.Parihar, for the respondent-workman.
(In SBCWP No.1957/1995)

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These two petitions for writ are preferred to question validity, propriety and correctness of the award dated 5.7.1994 passed by Labour Court, Bikaner in Labour Case No.167/1990.

In brief, the facts giving rise to present petitions are that the appropriate Government under its notification dated 30.11.1990 referred an industrial dispute to Labour Court, Bikaner for its adjudication in following terms:-

> "WHETHER the termination of workman, Shri Roshanlal son of Shri Heeralal, resident of Village and Post Banwali, Tehsil Sadulsahar, District Sriganganagar, from service, by the Manager, Rajasthan Cooperative Dairy

Federation Ltd., Hanumangarh, District Sriganganagar, is justified and legal? If not, then for what relief the workman is entitled?"

The workman submitted a statement of claim before the Labour Court stating therein that he was employed with the employer as daily worker/helper in the pay scale of Rs.350-430 under an order dated 8.1.1987 but his services were terminated by the employer on 10.2.1989 without assigning any reason. The termination made on 10.2.1989 amounts to retrenchment from service and that was effected without making compliance of the mandatory condition precedents prescribed to do so under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947") and on that count termination from service is void ab-initio.

In written, the employer came forward with the case that the workman was arrested by police on 4.2.1989 during the investigation of number of criminal cases and a huge stolen property was also recovered from his possession, therefore, looking to his conduct and prestige of the employer he was discontinued from service. The employer pleaded loss of confidence with the workman and on that count justified his termination from service.

The Labour Court, after considering the evidence adduced by the parties, reached at the conclusion that the termination of the workman from service was bad in eye of law being in violation of the provisions of Sections 25-F and 25-G of the Act of 1947. The Labour Court observed that the termination of the workman amounts retrenchment as that was not as an outcome of domestic inquiry. The Labour Court by the award impugned, while declaring retrenchment of the workman illegal, instead of making an order of reinstatement in service, granted compensation in lieu of that.

Being aggrieved by the award passed by the Labour Court, SBCWP No.1957/95 is preferred by the employer and SBCWP No.2541/95 is preferred by the workman.

The contention of counsel for the employer is that the Labour Court erred while awarding compensation to the workman despite the fact that the workman was involved in number of criminal cases and the employer lost confidence with him. On the other hand, the stand of the workman is that the Labour Court erroneously denied reinstatement in service though his termination was found bad by the Labour Court.

Heard counsel for the parties and examined the award impugned.

The Labour Court, after considering the entire evidence available on record gave a specific finding of fact that the employer discontinued the workman from service without adhering the provisions of Sections 25-F and 25-G of the Act of 1947. The employer accepted before the Labour Court that the workman was discontinued from service due to his arrest, recovery of stolen articles and before terminating him from service. It is well settled that whatever serious allegations there may be against the employee he cannot be discontinued from service without adhering the principles of natural justice.

As a matter of fact, in the instant matters the termination of the workman was made in a simplicitor manner, therefore, the learned Labour Court rightly treated it a retrenchment and found bad being in contravention of the provisions of Sections 25-F and 25-G of the Act of 1947. I do not find any error in the finding given by the Labour Court that termination of the workman amounts retrenchment and that was bad being in violation of the provisions of Sections 25-F and 25-G of the Act of 1947.

I also do not find any force in the contention raised by counsel for the workman that

after declaring the retrenchment bad the only course available with the Labour Court was to grant the relief of reinstatement in service with all benefits. The employer in its written statement pleaded loss of confidence with the employee. The Labour Court also considered and discussed the same as under:-

> "न तो प्रार्थी को उसके उक्त दुराचरण के सम्बन्ध में अप्रार्थी द्वारा कोई आरोप पत्र ही दिया गया है और न जाँच की गई है। इस प्रकार घरेलू जाँच नहीं होने पर यह दुराचरण प्रार्थी के विरूद्ध साबित नहीं माना जा सकता, इसी प्रकार फौजदारी प्रकरण जिनके निर्णयों की प्रतिलिपियाँ अभिलेख पर उपलब्ध है उनसे भी पाया जाता है कि प्रार्थी को उनमें दोषमुक्त किया गया है। शेष प्रकरण अभी भी विचारार्थ सम्बन्धित न्यायालय में लंबित है। लेकिन, अब तक किसी भी फौजदारी प्रकरण में किसी भी न्यायालय द्वारा प्रार्थी को सिद्ध दोष करार दिया जाकर दण्डित किया गया है-ऐसा कोई तथ्य प्रमाणित होना नहीं पाया जाता है। हम ऐसा मानते हैं कि चोरी के मामलों में जो व्यक्ति लिप्त हो और पुलिस ने जिसे नियोजन स्थल पर छापा मारकर गिरफ्तार कर उससे लाखों रूपयों की चोरी की संपति बरामद की हो और उसी के फलस्वरूप अनेक चोरी के फौजदारी प्रकरण विचारार्थ अभी तक लंबित हो, ऐसे व्यक्ति को नियोजन स्थल पर नियोजित रखना अप्रार्थी संस्थान की संपति की सुरक्षा व प्रतिष्ठा के हित में नहीं है और ऐसे व्यक्ति को सेवा में रखा जाना वांछित नहीं है। क्योंकि श्रमिक पर से नियोजक का विश्वास उठ जाता है।"

In the event of loss of confidence with a workman the Labour Court is having ample power to mould the relief that is to be granted to the workman. In the instant matters the Labour Court has awarded

the wages of ten years to the workman as compensation and I am of the view that i.e. an adequate substitute to the relief pertaining to reinstatement.

In view of whatever discussed above, I do not find any error in the award impugned that may warrant interference of this Court under Articles 226 and 227 of the Constitution of India.

Accordingly, both these petitions for writ stand dismissed.

(GOVIND MATHUR),J.

Kkm/ps.